IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6595 of 1986

with

SPECIAL CIVIL APPLICATION No 5692 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CRPN

Versus

AMARSINH CHHAGANBHAI PARMAR

Appearance:

1. Special Civil Application No. 6595 of 1986
   MRS VASAVDATTA BHATT for Petitioner No. 1
   MR MUKESH H RATHOD for Respondent No. 1
   GOVERNMENT PLEADER for Respondent No. 2
2. Special Civil Application No. 5692 of 1988
   MR MUKESH H RATHOD for Petitioner No. 1
   GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/11/2003

COMMON ORAL JUDGEMENT

By filing Special Civil Application No.6595 of 1986 under Article 227 of the Constitution of India, the petitioner-corporation has challenged the order passed by the Conciliation Officer, by which the Conciliation Officer has rejected the approval application submitted by the Corporation. Respondent no.1 was appointed as a conductor in the ST Corporation and he was subjected to departmental enquiry as he did not issue tickets to various passengers even though he had collected the fare from them. After the conclusion of the inquiry, the workman was removed from the service by the order dated 13th May, 1985. The S.T. Corporation had thereafter applied for approval as required under Section 33(b) of the Industrial Disputes Act. The said application was numbered as Case No.88 of 1985. The Conciliation Officer refused to grant the permission at that time on the ground that the concerned workman was not paid the washing allowance which was required to be paid simultaneously along with the order. Accordingly, the approval application was rejected at that time by the conciliation officer. The approval application was also rejected on the ground that one month's salary was also not paid to the workman.

Subsequently, the corporation again passed the order of dismissal on 10th March, 1986 and moved the conciliation officer for giving his approval. The conciliation officer again rejected the same on the ground that, after reinstating the concerned workman on the rejection of the first approval application, within one month, fresh order is passed and at the time of passing fresh order, no hearing was given to the workman. It is the said order which is challenged by the ST Corporation in this petition.

The workman has also filed a petition, being Special Civil Application No.5692 of 1988, inter alia, seeking a direction to respondents 1 and 3 to initiate prosecution against respondent No.2. In the said petition, the workman has also sought an interim relief, directing the Corporation to pay full back wages from the date of dismissal order. The said petition is also admitted by this Court on 29.8.1988 and notice as to interim relief was also issued, making the same

returnable on 12.9.1988. Subsequently, a Division Bench of this Court (Coram: R.C. Mankad & V.H. Bhairavia, JJ.) passed the following order on 11.4.1990:-

" ... ...

Interim relief directing Gujarat State Road Transport Corporation and Respondent No.2 to pay to the petitioner, without prejudice to the rights and contention of the said Corporation, wages on the basis of the last pay drawn by the workman w.e.f. April 1, 1990 regularly every month on the petitioner filing appropriate affidavit as per the provisions of Section 17-B of the Industrial Disputes Act, within one week from today.

... ...

2 At the time of hearing of these petitions, the learned advocate Mrs Bhatt vehemently argued that the ST Corporation, after curing the original defect in connection with not paying the requisite one month's salary as well as the washing allowance has passed fresh order of dismissal, after curing the said defects. It is submitted by Mrs Bhatt that it is not necessary for the Corporation to give fresh hearing to the workman as the misconduct against the concerned workman was already proved in the departmental enquiry. It is argued by her that the order impugned in Special Civil Application No.6595 of 1986 is not sustainable and the approval application, submitted by the Corporation, is required to be granted.

Mr Rathod, on the other hand, submitted that in view of the rejection of the approval application, the ST Corporation has already reinstated the concerned workman on 24th January, 2001. He further submitted that since the incident in question is a very stale one, this Court, in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India, may not disturb the order of the Conciliation Officer after such a long time.

3 At the time of hearing of this petition, both the learned advocates have ultimately submitted that this Court may pass appropriate order as the concerned workman should not go scot free since in the enquiry the misconduct is proved.

4 I have heard both the sides and since now both the advocates have submitted that this Court may pass appropriate order so that the old dispute can be put an end to, after going through the record of the case and considering the misconduct in question, in my view, the order of reinstatement is not required to be disturbed by this Court, especially when the ST Corporation has already reinstated the concerned workman on his original post. It is also required to be noted that the incident in question is of 7th February, 1980, and, though the reasoning of the Conciliation Officer is not proper and legal, since both the sides have left to this Court the question of imposing appropriate penalty on the workman, the order of the Conciliation Officer passed in Case No.33 of 1986 is substituted by this order and the concerned workman shall be subjected to the penalty of withholding of one increment with future effect. For the entire intervening period, i.e. from the date of removal till he was reinstated, he shall not be entitled to any back wages. In the meanwhile, if any wages are paid to the respondent-workman by virtue of the order under Section 17B of the I.D. Act, such wages are not to be recovered from the respondent workman by virtue of this order.

5 Accordingly, the order of the Conciliation Officer is modified. It is ordered that the concerned workman is entitled to the benefit continuity of service and seniority for the intervening period, i.e. from the date of removal till he was reinstated. However, he will be subjected to the penalty of withholding of one increment with future effect. The order of the Conciliation Officer stands substituted accordingly.

6 Special Civil Application No.6595 of 1986 is accordingly partly allowed. Rule is accordingly partly made absolute, by substituting the order of the Conciliation Officer with the present order. No costs.

7 In view of the aforesaid order, Special Civil Application No.5692 of 1988 filed by the respondent-workman has become infructuous. Rule is discharged. Notice as to interim relief is also discharged. Interim relief is vacated. No order as to costs.

(P.B. Majmudar, J.)
*mohd